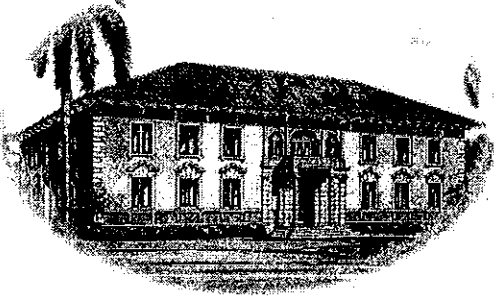


Welcome to Historic Lake Park



**MINUTES  
PLANNING & ZONING BOARD  
MONDAY, JULY 9, 2007  
535 PARK AVENUE  
LAKE PARK, FLORIDA**

**Call to Order**

**Roll Call**

Chairman Jeff Blakely	Excused
Vice Chairman James Dubois	Present
Jeanine Longtin	Present
Diane Munroe	Present
Todd Dry	Present
Tim Stevens, 1 <sup>st</sup> Alt.	Excused
Helen Hironimus, 2 <sup>nd</sup> Alt.	Present

**Approval of Agenda**

Ms. Munroe made a motion to approve the agenda as amended. Seconded by Mr. Dry.

	Aye	Nay
James Dubois	X	
Jeanine Longtin	X	
Diane Munroe	X	
Todd Dry	X	
Helen Hironimus	X	

**Motion carried 5-0**

**Regular Agenda:**

**New Business**

A. A motion was made by Ms. Munroe to postpone the Special Exception for Julius Automotive, 900 Old Dixie Highway, Lake Park, to the next regular schedule meeting of the Planning & Zoning Board. Seconded by Mr. Dry.

	Aye	Nay
James Dubois	X	
Jeanine Longtin	X	
Diane Munroe	X	
Todd Dry	X	
Helen Hironimus	X	

**Motion carried 5-0**

### **B. Quasi-Judicial Hearing**

A Variance application submitted by Randi Aberns for property located at 306 Foresteria Drive, Lake Park, Florida, to construct a new outside staircase. The new staircase encroaches into the side yard setback by two feet 2 inches.

All witnesses desiring to speak on the above matter were sworn in. Board members disclosed that no ex parte communication had taken place.

Mr. Patrick Sullivan, Community Development Director, identified himself for the record. Mr. Sullivan stated that this Variance is for a staircase that has been built outside of the setback, and was built without a permit, and the applicant is requesting a Variance so that the staircase does not have to be removed.

Mr. Sullivan stated that Staff's opinion is that this request should be *denied* because the applicant is unable to meet most of the criteria for a Variance. Mr. Sullivan stated that he would go over some of the Variance criteria. Attached hereto and made a part of these minutes is Exhibit "A" which is the staff report which list the six (6) Criterias.

Ms. Roselli, Town Attorney, stated that on the application for Zoning Variance, Section d was left blank and Section d stated "Explain how the variance requested is the minimum variance that will make possible a reasonable use of the land, building or structure", and also that Section f had been filled in with N/A when it asked "Explain how the grant of the requested variance will be in harmony with the general intent and purpose of the Zoning code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare".

Ms. Munroe asked if the deterioration of the staircase was from hurricane damage, or because it was old. Mr. Sullivan stated that he was not sure and he was taking the information from the variance form which Ms. Aberns filled out. Mr. Sullivan stated further that it did not matter if the deterioration was from fire, hurricanes, or deterioration.

Ms. Aberns identified herself for the record stating that she was the applicant filing for the variance at 306 Foresteria Drive. Ms. Aberns stated that she bought the house last year and the staircase was falling down and the staircase was not safe. Ms. Aberns stated that she should have applied for a building permit or secured a contractor. Ms. Aberns stated that the original staircase actually blocked one of the windows of the family room on the back of the house. Ms. Aberns further stated that they were just trying to make the ingress and egress safe from the second floor.

1 Ms. Roselli, Town Attorney, stated that the Town of Lake Park wants the applicant to relocate  
2 the staircase so it does not encroach on the setbacks, and that there are other areas where the  
3 staircase can be built.

4  
5 Vice Chairman Dubois asked the applicant if she had any items to present as her application was  
6 blank for item d and item f was marked "not applicable". Ms. Longtin asked if the applicant had  
7 paid 2 times the fee and the applicant responded that she had paid it twice, once as an  
8 owner/builder then again through a contractor. Ms. Roselli explained that the applicant applied  
9 as an owner/builder as it was determined that she did not live at 306 Foresteria; therefore, the  
10 permit could not be issued. The applicant was then informed to hire a contractor and the permit  
11 could not be processed as the staircase did not meet the setback requirements.

12  
13 Ms. Munroe stated that she agreed with Staff's recommendation and made a motion to deny the  
14 variance. Seconded by Mr. Dry.

15

	Aye	Nay
James Dubois	X	
Jeanine Longtin	X	
Diane Munroe	X	
Todd Dry	X	
Helen Hironimus	X	

16 **Motion carried 5-0**

17  
18 **C. Review of Text Change, Chapter 78 (Zoning) for Design Standards.**

19  
20 Mr. Patrick Sullivan, Community Development Director, presented a powerpoint presentation,  
21 and stated that the Town Commission was concerned that we do not have design guidelines for  
22 commercial properties in the Town other than the Northlake Boulevard Overlay District and the  
23 Park Avenue Downtown District. Mr. Sullivan stated that many projects have come before the  
24 board, such as Bank of America as an example, and when we try to reach for design guidelines  
25 for doing something they are not there as they do not exist in the code. Mr. Sullivan stated that  
26 the Town was pretty well built out, and that we have an aging industrial area that will be  
27 redeveloping over the next few years. Mr. Sullivan also stated that he went back and looked  
28 over the NBOZ and felt that the guidelines were very good, and that the guidelines were  
29 sufficient and could be used for our industrial area. Mr. Sullivan stated that he felt by adopting  
30 these guidelines, it would provide a consistency of our design review throughout the Town.

31  
32 Vice Chairman Dubois stated that he would like to see something in the ordinance about  
33 pedestrian walkways.

34  
35 Mr. Sullivan stated that what he needed from the board was a motion recommending to the  
36 commission that they move forward with adopting this ordinance.

37  
38 Ms. Munroe stated that she thought it was a great idea and it would make it easier for people to  
39 go through the process. Ms. Longtin also stated it was a great idea and it was a long time  
40 coming, and that she also agreed with Vice Chairman Dubois about connectivity between the  
41 buildings and pedestrian walkways. Mr. Dry asked for clarification about the 50% rule on Page

1 three. Mr. Sullivan stated that he needed to take a look at it, and possibly change it. Mr. Dry  
2 asked if there were still facades grants available, and Mr. Sullivan stated that CRA grants were  
3 available only in the CRA areas.

4  
5 Ms. Longtin made a motion to approve the Ordinance so that it may go forward to the Town  
6 Commission for approval. Seconded by Ms. Munroe with the stipulation that was discussed.  
7

	Aye	Nay
James Dubois	X	
Jeanine Longtin	X	
Diane Munroe	X	
Todd Dry	X	
Helen Hironimus	X	

8 **Motion carried 5-0**

9  
10 **Comments from Vice Chairman Dubois**

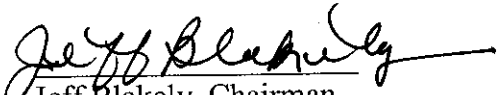
11  
12 Vice Chairman Dubois stated that they had been looking forward to seeing the Ordinance as well  
13 as the commission.  
14

15 **Public Comment**

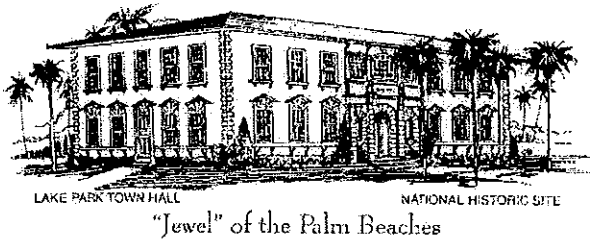
16  
17 Ms. Leigh Kendall, identified herself for the record as a resident of 318 Hawthorne Drive, Lake  
18 Park, Florida, and President of the Lake Park Historical Society. Ms. Kendall stated that she  
19 wanted to clarify what was said at some of the commission meetings as to the Historic  
20 Preservation Board and concerns of criteria being met for the board members. Ms. Kendall said  
21 that she just wanted to make sure that the board was in compliance with the CLG, and that she  
22 wanted to officially invite the board members to the town commission meeting on July 18, 2007  
23 as the Historic Society will be making a presentation on some ideas how to move forward with  
24 historic preservation.  
25

26 A motion was made by Ms. Munroe for adjournment. Seconded by Ms. Longtin. The meeting  
27 was adjourned at 8:25 p.m.

28  
29 Approved: 8/6/07

  
Jeff Blakely, Chairman

30  
31  
32 Attest: Jenna Otto  
33  
34  
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36  
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38  
39  
40



**TOWN LAKE OF PARK  
PLANNING AND ZONING BOARD**

**Meeting Date: July 9, 2007**

**Date Prepared: July 2, 2007**

**REQUEST FOR A VARIANCE FROM THE SIDE SETBACK REQUIREMENTS  
APPLICANT: Randi Aberns**

**APPLICANT'S REQUEST:** A request by Randi Aberns ("Applicant") for a variance of the setback requirement of Town Code Section 78-64(4)(b), to allow a reduction in the side setback requirement from 10 feet to 7.4 feet along the east property line for a single family home being operated as a board and care facility (sober house/half way house) located at 306 Foresteria Drive, in the R-1 zoning district. The Applicant constructed an exterior staircase to replace a prior existing staircase without first applying for a building permit from the Town. The new staircase encroaches into the side setback by 2.6 feet.

**BACKGROUND:**

<b>Applicant(s):</b>	<b>Randi Aberns</b>
<b>Owner(s):</b>	Randi Aberns
<b>Address/Location:</b>	306 Foresteria Drive, Lake Park, FL 33403
<b>Net Acreage:</b>	.14 acres
<b>Legal Description:</b>	See Application
<b>Existing Zoning:</b>	R-1 Residential District
<b>Future Land Use:</b>	Residential Low Density

**Adjacent Zoning**

<b>North:</b>	R-1
<b>South:</b>	R-1
<b>East:</b>	R-1
<b>West:</b>	R-1

**Adjacent Existing Land Use**

<b>North:</b>	Residential
<b>South:</b>	Residential
<b>East:</b>	Residential
<b>West:</b>	Residential

**I. APPLICANT'S VARIANCE REQUEST**

The Applicant is requesting an after-the-fact variance from Section 78-64(4)(b) *Side Yard Requirement*, which requires that there be a side yard setback of not less than

ten feet. The Applicant is requesting a 2.6-foot reduction in the side yard setback along the eastern side yard property line from 10 feet to 7.4 feet to allow a non-conforming staircase that was constructed by the Applicant without a building permit.

## **II. SUMMARY**

The single-family home at 306 Foresteria ("premises") was originally built in 1970 with a staircase in the same general location as the subject staircase. The stairway provided access to a second floor deck. According to the Applicant, the former stairway was replaced with a new one because of deterioration. However, the Applicant replaced the entire stairway without obtaining a building permit.

The premises has been the subject of numerous code violations. The Applicant was cited in December 2006 for operating a business at the property without an business tax receipt f/k/a occupational license. The Applicant runs a business at the premises called the "Women of Dignity House" which is some form of sober house, half way house, or residential substance abuse treatment facility. Despite the fact that the Applicant was found in violation of the Code as charged and an Order Finding Violation was issued by the Special Magistrate, the Applicant remains in violation of the business tax receipt requirements of the Town Code and state statute.

In the course of the on-going code enforcement proceedings involving this Applicant and the premises, on February 17, 2007, Doris Bainter, Code Compliance Officer for the Town of Lake Park, inspected the premises and discovered the staircase that had been constructed without a building permit. Officer Bainter cited the Applicant for failing to obtain a building permit before commencing construction of the new staircase. On April 5, 2007 after a quasi-judicial hearing, the Town's Special Magistrate found the Applicant in violation of the Code as charged in the Notice of Violation and issued an Order Finding Violation. The Magistrate gave the Applicant until May 31, 2007 to come into compliance with the Code. The Order did not specify how the Applicant was to come into compliance, but the two obvious options were to either remove the structure or apply for an after-the-fact building permit. The Applicant failed to comply with the Order of the Special Magistrate and comply with the Code by the May 31, 2007 compliance date. The Town has two recorded liens against the subject property and another property owned by the Applicant located in Riviera Beach.

On May 25, 2007, the Applicant applied for an "after-the-fact" building permit for the staircase. In reviewing the permit application, Town staff discovered that the replacement staircase was constructed in such a manner that the staircase encroaches into the side setback by 2.6 feet. In addition, the Palm Beach County Fire Inspector for the Town, Diane Weibert also inspected the premises and determined that the residence was being operated as a "board and care facility" (sober house/half way house) and that consequently, the staircase must be enclosed. Because the staircase was constructed in violation of the Town Code and the Florida Building Code, the Town could not issue the permit. The Applicant could have explored legal alternatives prior to reconstructing the staircase and avoided this issue. The Applicant has requested a variance to allow the encroachment into the setback rather than removing the non-conforming structure.

The original stairway was also a non-conforming structure because it was located within the side yard setback. Non-conforming structures may not be replaced unless they are brought into compliance. Section 78-215 (2) of the Town Code states that:

"should such structure be destroyed by any means to an extent of more than 50 percent of its replacement cost at time of destruction, as determined by the community development director, it shall not be reconstructed except in conformity with the provisions of this chapter". The Applicant stated in the variance application that the staircase fell down, was rotted and unsafe and was replaced with a new staircase. More than 50 percent of the structure was destroyed. Consequently, Section 78-215 (2), as stated above, applies. The current staircase is not "grandfathered" and must comply with the Code. The new staircase does not conform because it encroaches into the side setback by 2.6 feet, and the staircase is not enclosed, which is a special requirement for property used as a "board and care" facility.

The second floor deck extends along the rear yard and appears to have ample room for a stairway that is within the setback. There has been no evidence presented by the Applicant that a stairway cannot be built within the setback. The Applicant has applied for a variance of the side yard setback requirements set forth in Town Code Section 78-64(4)(b), to reduce the side setback from 10 feet to 7.4 feet.

The Applicant recently filed suit against the Town claiming that the Town is discriminating against the Applicant and the Women of Dignity House business.

### III. LAW ON VARIANCES.

In Florida, variance requests are conducted at quasi-judicial public hearings. This requires that the applicant and Town staff shall have the opportunity to present evidence, bring forth witnesses and ask questions of, or cross-examine any other party's witnesses. Members of the public may provide comment. The Board shall determine whether testimony presented is relevant and material, cumulative or repetitive. If there is disagreement amongst the Board as to the relevance or repetitiveness of any testimony, the Board shall be polled and the majority shall prevail in such rulings. The Board shall assign such weight and credibility to the testimony of any witness as it deems appropriate. The Board shall have the authority to refuse to hear any testimony which is irrelevant, cumulative or repetitive. All witnesses shall be sworn and give testimony under oath. Ex parte communications with Board members outside of the presence of the other parties are not prohibited, however, disclosure of such communications by Board members is required. All decisions of the Board shall be supported by substantial competent evidence in the record pertinent to the proceeding, and must be consistent with the Comprehensive Plan.

### III. Analysis of Criteria and Findings for Variance

Code Section 78-185 contains six (6) criteria, all of which must be met before a variance can be granted. **The burden of proving that the variance request satisfies all of the variance criteria is on the Applicant.** Note: Staff comments are in bold. See criteria justification statement submitted by the Applicant attached.

**CRITERIA 1:** *That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same zoning district.*

The Applicant did not provide any evidence that the staircase is necessary nor was evidence provided that the only option for locating the stairs was within the setback. The lot is a standard size lot for the neighborhood and has no distinguishing differences from other lots in the area. Criteria NOT met.

**CRITERIA 2:**

*That the special conditions and circumstances do not result from the actions of the Applicant.*

The circumstances do result from the actions of the Applicant since the Applicant intentionally replaced a clearly structural component of the building without obtaining a building permit. Had the Applicant gone through the permitting process, the permit request to locate the staircase would have been denied and the Applicant required to either relocate the staircase or abandon the staircase installation. Instead, the Applicant proceeded with the construction without a permit and has created the hardship of which the Applicant now complains. The conditions unequivocally result from the acts and omissions of the Applicant, and any hardship is purely self-created. Criteria NOT met.

**CRITERIA 3:**

*That granting the variance requested will not confer on the Applicant any special privilege that is denied by the Town Zoning Code to other lands, buildings or structures in the same zoning district.*

The granting of the requested variance would confer a special privilege that is not commonly enjoyed by other buildings and properties in the R-1 zoning district in which the property is located. A variance would allow the Applicant to build within the setback that is denied other buildings and structures, as it is not allowed by Code. Furthermore, in view of the fact that the Applicant created the condition from which she is requesting relief, alone is basis for denial of the request. Granting of a variance under such circumstances is contrary to established law, would create bad precedent, and would reward the Applicant for circumventing the Town Code and the Florida Building Code by building a structure without a permit. Criteria NOT met.

**CRITERIA 4:**

*That literal interpretation of the provisions of the Code would deprive the Applicant of rights commonly enjoyed by other properties in the same zoning district and would work unnecessary and undue hardship on the Applicant.*

Other property owners in the same zoning district are not allowed to construct structures in setbacks without first obtaining a variance and then a building permit. Non-conforming structures that are replaced must conform to the Code. The new staircase does not comply with the current code. As previously stated, the hardship if any on the Applicant if the staircase must be removed, is completely self-inflicted. By failing to first apply for a permit, the Applicant foreclosed the opportunity to first explore alternatives to building the staircase or alternative locations to avoid an encroachment into the setback. It is because of these precise circumstances, that permits are required to be obtained in advance of construction and not after the fact when it is not so easy to correct mistakes in the placement, location and design of the proposed improvement Criteria NOT met.

**CRITERIA 5:** *That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.*

The Applicant did not provide evidence that (1) the stairs are necessary or required by any Code; or (2) the stairs could not be built within the setback. Moreover, the staircase is not enclosed as required for the board and care business operated on the premises. Criteria NOT met.

**CRITERIA 6:** *That the granting of the variance will be in harmony with the general intent and purpose of Code Section and the variance will not be injurious to the area involved or otherwise detrimental to the public welfare.*

The staircase encroachment into the side setback is not consistent with the setback requirements of the Code. The staircase is not properly designed for the premises that is being operated in violation of numerous sections of the Town Code. Criteria NOT met.

#### **IV. CONSISTENCY WITH THE COMPREHENSIVE PLAN**

The Town's Comprehensive Plan does not address set backs, and therefore the variance request is consistent with the Town's Comprehensive Plan.

#### **V. STAFF RECOMMENDATION**

Staff recommends DENIAL of the request for the Variance to reduce the side setback from 10ft to 7.4ft. The Town Code requires that all of the variance criteria be met and in this case none of the criteria have been satisfied.